

## **RESOLUTION**

**WHEREAS**, the Board's staff has developed for the Board procedures for conducting Disability Pension Eligibility Audits ("Audit Procedures") to determine whether persons receiving Line of Duty and Ordinary Disability Pension Benefits ("Disability Benefit Recipients") continue to qualify for such benefits;

**WHEREAS**, the City has on behalf of the Board contracted with Memphis Consulting Group to assist the Board in conducting the initial Disability Pension Eligibility Audits;

**WHEREAS**, in connection with the audit procedures, the Board has requested each Disability Benefit Recipient to provide certain information that will be used to determine whether the Board will make further inquiry or investigation about the status of such Disability Benefit Recipient;

**WHEREAS**, some Disability Benefit Recipients expressed questions and concerns about the audit procedures;

**WHEREAS**, the Board desires to clarify its audit procedures.

### **NOW THEREFORE BE IT RESOLVED**

1. As the Board has stated during meetings at which the Audit Procedures were discussed and adopted, the purpose of the audit information packet is to obtain preliminary information about each disability participant. The Board is only requesting each Disability Benefit Recipient to make a reasonable and good faith effort to provide requested information, because the information provided may eliminate any further inquiry by the Board. Employee and Retiree organizations have been informed that the Board will work with their members to provide the organizations with the names of persons who fail to furnish any information so that the organizations can try to obtain the requested information before the Board takes any action to interrupt anyone's benefits.

2. Participation in the initial disability audit is required of all Disability Benefit Recipients. A participant's refusal to follow reasonable procedures, adopted by the Board to assist the Board in compliance with the Pension Ordinance in fulfilling its continuing obligation to determine questions concerning continued right and eligibility for a disability pension can also be grounds to discontinue benefits until the participant complies with such procedures. In any event, before any benefits will be discontinued the Board must approve such an action. If the Board discontinues a participant's benefits the participant will be given the right to a contested case hearing before an administrative law judge and only after a participant's rights to a contested case hearing of a Board determination are concluded, waived or lapsed will benefit payments be discontinued. Participants who are unable to provide all of the information requested in the audit package due to a legitimate hardship including but not limited to inability to pay for the requested medical opinion, may indicate that information on the audit response

form. A legitimate hardship in providing the requested information will not constitute a refusal to follow procedures. However the failure to provide the requested information may be grounds for the Board to require the participant to undergo a medical examination by a Qualified Physician as defined in the Pension Ordinance.

3. The Board will examine the audit information supplied by each participant to determine if further inquiry or information is needed. If further inquiry or information is deemed necessary, the participant may be required to undergo a medical examination by a Qualified Physician retained and compensated by the Plan to determine whether the participant continues to suffer from the Ordinary or Line of Duty Disability. The Board believes voluntary submission of audit information is far less onerous and invasive on a participant and is far less costly on the Plan than a massive recall of Disability Benefit Recipients for re-examination.

4. The request for medical information shall be specifically limited to medical information related to a job description, which will be attached to the request. If any packet did not contain the appropriate job description, a participant should contact the administrator of the audit program for further information. The Board shall notify the Recipients of the individual or company acting as the Administrator, in writing, along with contact information for the Administrator.

5. No disability payments will be discontinued until the Board makes a determination to cancel, reduce or suspend such payments and then only after a participant's rights to a contested case hearing pursuant to T.C.A. § 4-5-301 et seq. of a Board determination are concluded, waived or lapsed.

6. Typically no participant's benefits may be discontinued unless the Board determines that a participant no longer suffers from the Ordinary or Line of Duty Disability, based on a medical examination by a Qualified Physician retained and compensated by the Plan. However, Ordinary disability payments may be reduced and possibly eliminated without a medical determination, if the Ordinary Disability Recipient engages in a gainful occupation not with the City. Therefore, an Ordinary Disability Participant may also be required to provide information about such participant's wages and net earnings from self-employment. IRC sec 1402 & 3401. A participant need not provide any other information not possibly related to a participant's gainful employment or occupation not with the City, such as his or her capital gains, income earned by a participant's spouse (unless the spouse is being compensated by the City for his or her disability) or income from passive activities, in which a recipient does not materially participate.

7. The Board will also require Line of Duty Recipients to provide the same income information as an Ordinary Disability Recipient. Benefits of Line of Duty Recipients will not be terminated based on any such participant's income from other employment alone. The income information will only be used to allow the Board to decide if a Line of Duty Recipient should be recalled for a medical examination. A Line of Duty Recipient must also provide a copy of all job descriptions from which income is earned.

8. To satisfy the Plan's request for information, a Disability Benefit Recipients may provide a copy of Form 1040 or 1040A for 2011 or 2012, if available, and redact information on those forms other than the entries on lines 7,12,17,19, 21, 56 and 62 of Form 1040 and on lines 7, and 36 of Form 1040A. The participant shall also provide Form 1040 schedules C and E, if applicable, W-2 Statements for the participant and his spouse (all information except name of spouse may be redacted) and all 1099 statements reflecting non-employee compensation. If this information is not available the participant may submit the Tax Information Authorization properly executed and completed.

9. The Plan will protect and keep confidential any tax documents it receives from the IRS as it does with any medical information related to a participant. A participant may request the Plan to redact any tax information the Plan receives under the authorization consistent with this resolution.

10. The Board believes the forgoing guidance is consistent with the procedures it has previously discussed and authorized. The Board hereby ratifies and confirms the Policy and Procedures for Disability Audits as clarified by this resolution, including the request for information packets, previously discussed and authorized by the Board and implemented by the staff. The Board also approves the payment of all costs, including any consulting costs, and expenses for conducting the disability audit in accordance with the Pension Ordinance.

11. The Administrator shall provide a copy of this resolution to each Ordinary and Line of Duty Recipient with any communication that is sent to any Ordinary and Line of Duty Recipient who is subject to an audit. The Administrator shall also provide a copy of this Resolution via first class mail to any Ordinary and Line of Duty Recipient who has previously responded to communication relating to the audit begun in 2013. Additionally, the City shall post a copy of this Resolution on the Pension Page of the Human Resources Web Site.

NOW THEREFORE BE IT RESOLVED, that the Pension Board hereby directs the Human Resources Director and the Benefits Manager to take all steps necessary to effectively and efficiently undertake a Disability Audit in accordance with this Resolution.

I hereby certify that the foregoing is a true copy  
and document was adopted, approved by the  
Council of the City of Memphis in regular  
session on

Date FEB 04 2014  
Valerie C. Sripes  
Deputy Comptroller-Council Records